

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

FEBRUARY 1999 SESSION

FILED
December 28, 1999
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE, * C.C.A. #M199700084CCAR3CD
Appellant, * DAVIDSON COUNTY
VS. * Honorable Walter C. Kurtz, Judge
DENNIS J. HUGHES AND * (Bribery/Conspiracy To Commit Bribery)
SUVONNYA LAKEISHA SMITH, *
Appellees. *

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OPINION FILED: _____

AFFIRMED

JOHN EVERETT WILLIAMS,
Judge

OPINION

The defendants, Dennis J. Hughes and Suvonnya Lakeisha Smith, appeal as a matter of right their Davidson County convictions of bribery of a witness, a Class C felony, and conspiracy to bribe a witness, a Class D felony. The defendants were also charged with solicitation to commit First Degree murder, but the trial judge granted the defendants' motions for judgments of acquittal and withdrew this charge from the jury's consideration.

On this appeal, both defendants raise the two following issues:

1. Whether sufficient evidence existed to find the defendants guilty of bribery and conspiracy to commit bribery; and
2. whether reversible error occurred when a state's witness invoked his Fifth Amendment privilege in the presence of the jury, and whether prosecutorial misconduct occurred when the state called that witness.

The following issues were raised only by defendant Hughes:

3. Whether the trial court erred by allowing testimony involving a fee dispute between Hughes and a prior client; and
4. whether the fines assessed against Hughes should be concurrent or consecutive.

The following issue was raised only by defendant Smith:

5. Whether the trial court improperly sentenced Smith.

After review of the record, the briefs, and the applicable law, we AFFIRM the convictions of both defendants and we AFFIRM the sentence of Smith.

BACKGROUND

Rhonda Williamson

The instant convictions arise from the bribery of the state's key witness to the murder of Naron Allen. This witness, Rhonda Williamson, was the murder victim's girlfriend and was sitting beside him in a car when Wayford Demonbreun shot and killed him on November 3, 1993.

Dennis Hughes

The defendant, Dennis J. Hughes, a practicing attorney in Davidson County, was retained by Demonbreun to defend him in his murder trial and other unrelated cases.

Suvonnya Smith

The defendant, Suvonnya Lakeisha Smith, became Demonbreun's girlfriend about three to four months after the murder and continued as such at all times pertinent to these proceedings. Smith and Demonbreun have one child together.

Rhonda Cecil

Rhonda Cecil, an employee of the Metropolitan Nashville Police Department Domestic Violence Division, testified that she received a telephone call from an anxious Williamson. Cecil, who had met Williamson through the Victim Intervention Program, said that she called the Murder Squad detectives and told them that she had received a call from Williamson. Williamson told

Cecil that Demonbreun's attorney and girlfriend had approached her about changing her story in return for money. Cecil then called the District Attorney General's office.

Delores Williamson

Williamson's aunt, Delores Williamson, testified that Williamson had called her as well. Delores Williamson said that she told Williamson to call the police and reject the offered money.

Tim Allen

Sergeant Tim Allen of the Metropolitan Nashville Police Department testified that he issued Williamson a recording device.

The First Meeting

Prior to her meeting either codefendant, Williamson identified Demonbreun as the slayer and testified at the preliminary hearing and the grand jury that Demonbreun shot and killed Allen. Williamson testified that in late 1994 Smith came to Williamson to get her hair braided. At some point during the braiding session, Smith said that she had to leave to prepare food for "Wayford." Williamson excitedly responded, "What?" and jumped back. Smith asked Williamson, "Oh, so you[re] Rhonda," and Williamson responded that she was Rhonda, the occupant in Allen's car. At which time, Williamson called Demonbreun and handed Williamson the phone. She said Demonbreun told her that he was not trying to shoot her when he shot into the car.

The Offer

By January 1995, the codefendants had concocted a scheme in which they would obtain a tape-recording of Williamson's recanting her testimony about the murder. This recording would subsequently be used to discredit Williamson's testimony. Williamson testified that in January 1995 Smith called her from Hughes's office and offered her \$3,000 to say on tape that glass splattered in her eyes and prevented her from actually identifying the shooter. Williamson responded that she had earlier testified in court about the murder and was reluctant to change her story. Williamson testified that Hughes was in the background of the phone call, telling Williamson that he and Smith would come to her house later in the day. Later, Hughes and Smith arrived in a black Lexus, but Williamson was frightened and did not allow them in her house.

The Recordings

Following this meeting, Williamson recorded three conversations. Hughes's voice is present on only the tape of the first conversation. The conversation began when Smith arrived at Williamson's house, and the two entered a car occupied by Hughes. As Williamson began to describe the murder, Hughes repeatedly interrupted her and suggested explanations for her earlier statement and testimony. He said automobile window glass, shattered by the shooting, entered her eye and prevented her from actually identifying the shooter. Further, he suggested that her earlier statement and testimony resulted from the pressure by the police.

At one point in the taped conversation, Williamson reaffirmed her earlier observations of the murder, only to abruptly retract them after several seconds of silence:

Williamson: No, I mean it. I was sitting in the car when Wayford shot him. [intervening period with no dialogue] Naw, I didn't see anything.

Williamson testified that Smith, during the silence, hit the back of the seat and told her that she was to change her story.

At least one unidentified person approached the car during this meeting and asked Hughes's identity. When Williamson replied that he was her "insurance man," the unidentified person told her she was lying and identified the vehicle's male occupant as Dennis Hughes.

Smith and Williamson exited the car, and Smith told Williamson that Hughes was scared to speak to her forthrightly in fear that she was "wired." Smith told her that Hughes wanted Smith to search her.

Williamson made a second recording the following day. This tape was of a telephone conversation between Smith and Williamson. On this tape, Williamson asked, "Is he going to give me the money?" to which Smith responded, "Yes, he is." The conversation proceeded:

Smith: It could be me and you but I'm just saying he gonna have to, that's the lawyer he gonna have to hear you, he gonna have to hear you any way it go. But you ain't going have to be all up on no stand or no [stuff] like that.

Williamson: But well, this is what I'm saying, okay look, listen to this, Keisha. One, if I had said that, uh, I didn't see him do this; right?

Smith: Uh-huh.

Williamson: And then —

Smith: Because look, don't you think I got all this straight? I was in his office for two days straight, went to ask him what you supposed to say and what you not supposed to say. This is how you supposed to come to me. You just said that basically everybody was pressuring you, DA, policeman, and all that. But the only reason why you said "yeah" cause you wanted to get it over with, but deep down in you heart you been thinking about it and you can't send nobody away for something that you really know that you can't prove that he did.

Williamson: Uh-huh.

Smith: That's all you have to say, That is all you have to say.

Williamson: Just that, and it will be over with.

Smith: And it will be over with.

Williamson: And you promise.

Smith: I promise, that if he try to make you say more then I'm gonna stop and be like this, that's all she gonna say. And that way I bet he deal with it. That will be enough. Deep down in your heart you knew you couldn't send that boy away because if you did you just said it to get away, and now that it was working on your conscience, just make it sound like that.

Williamson: Uh-huh.

Smith: That's it. That is it.

Smith reassured Williamson that she would receive the money when she provided a recorded statement for Hughes. She further reassured Williamson that she would not have to testify if she provided the tape because the case would be dropped. If Williamson made the tape and if the authorities asked about her prior testimony, she should say she had been "pressured" to identify Demonbreun. Williamson also asked if she could merely avoid court, and Smith replied that would be unacceptable because, "he is saying . . . they gonna think he said something for you to make you leave out of town."

The third tape was another telephone conversation between Smith and Williamson, in which Smith says, "and he told me, he said he ain't coming back to your house since you don't, he don't want you to get in no trouble." Smith told Williamson that "I ain't got all of it. . . . But I got some of it to let you know that I ain't [lying]." Williamson agreed to a meeting, during which Smith told Williamson that "he" would want Williamson searched.

Unrecorded Conversations

Williamson testified that she had other unrecorded conversations with Smith, including one in which Smith wanted her to ride to K-Mart for a tape to make the requested recording.

Judge Shriver

The state called the late Judge Thomas Shriver to testify. Judge Shriver presided over all three of Demonbreun's trials for the murder of Naron Allen. Judge Shriver testified that he declared a mistrial during Demonbreun's first trial. He had noted that during Hughes's cross-examination of Williamson, Hughes asked her about some fear of changing her story and perjury. To this, Williamson replied with a question, "When they offered me the money?" Hughes replied, "Yeah." Judge Shriver, alerted to some problem, stopped the testimony, sent the jury out, and inquired into the matter. Judge Shriver heard the taped conversations between Williamson and the codefendants, declared a mistrial, relieved Hughes, and appointed Mickey Gibson to represent Demonbreun.

Judge Shriver then ordered Hughes to surrender fees received for defending Demonbreun. He held a hearing to determine a fair amount of funds. Judge Shriver testified that the amount was contested and that his determination was complicated by the lack of receipts and by Hughes's representation of Demonbreun on multiple charges. Judge Shriver found a substantial disparity between what Hughes claimed to receive and what Demonbreun's family testified they paid. He concluded that Hughes received approximately \$31,400. Judge Shriver also testified that he considered contempt charges against Hughes.

Timothy Davis

The state alleged that the codefendants contracted with Timothy Davis, a.k.a. Teenie Weenie, a prisoner, to murder Rhonda Williamson. In support of this charge, the state planned to call Davis as its only witness. At the trial, Davis refused to testify and invoked his Fifth Amendment privilege in the presence of the jury. The trial judge excused the jury and determined that the witness would continue to refuse to testify. He did not make any finding whether the witness's refusal to testify was justified. He did not levy any sanctions against the witness for his refusal to testify. The trial judge did, however, grant the defendants' motions for judgments of acquittal. The trial court advised the jury that Davis refused to testify and that the charge contained in Count Three of the indictment against the defendants charging solicitation of First Degree murder was withdrawn from their consideration.

The totality of Davis' appearance before the jury follows:

Timothy Davis, having first been duly sworn, was examined and testified as follows:

THE WITNESS: I plead the Fifth. I plead the Fifth, that's how I plead.

THE COURT: Well, wait until you hear the questions.

THE WITNESS: But I'm pleading the Fifth.

BY MR. ZIMMERMAN:

QUESTION: Would you tell the court your full name, sir?

ANSWER: In the paper you all got Teenie-Weenie Davis.

QUESTION: What is your name, sir?

ANSWER: Teenie-Weenie Davis. That's what's in the newspaper this morning.

QUESTION: What's your name, sir? Are you Timothy Davis?

ANSWER: Timothy Lamont Davis.

QUESTION: Mr. Davis, did you ever -- were you ever taken to the law office of Mr. Dennis Hughes by the defendant Keisha to speak with Mr. Hughes?

ANSWER: (No response.)

QUESTION: Are you going to answer our questions?

ANSWER: (No response.)

MR. ZIMMERMAN: Your Honor, I'd ask the Court him to answer [sic] the questions.

THE COURT: Okay, Mr. Davis, answer the questions please.

THE WITNESS: I politely first off the top, how do you plead the Fifth? Ain't nobody direct me and told me and how to plead the Fifth.

THE COURT: Well, you can just say that I take the Fifth Amendment.

THE WITNESS: That's what I'm taking.

THE COURT: Okay. All right. Members of the jury, let me ask you to step back into the jury assembly room please.

Sentencing

After the jury returned guilty verdicts against the codefendants, the trial court applied to Hughes's sentence enhancement factor (2) he was "a leader in the commission of an offense involving two or more criminal actions" and factor (15) his offense constituted an abuse of public or private trust. See Tenn. Code Ann. § 49-35-114 (2), (5). The trial court placed little weight on (2) but considerable weight on (15). That court also found one mitigating factor: the crime was not one of violence or one that threatened severe bodily injury. See Tenn. Code Ann. § 40-38-113(1).

The trial court sentenced Hughes to three years confinement on count one and to four years and six months confinement on count two, to be served concurrently in the workhouse. The trial court further imposed a total fine of

\$15,000--\$5,000 on the first count and \$10,000 on the second. That court denied alternative sentencing for Hughes.

Regarding Smith, the trial court applied mitigating factor (6) her youth and factor (1) the crime involved no threat of severe bodily injury. See Tenn. Code Ann. § 40-35-114(1),(1). Because her offenses so clearly offended the integrity of the judicial system, the court considered her neither a mitigated offender nor a candidate for immediate probation. The Court also cited a need for deterrence. See Tenn. Code Ann. § 40-35-103. On count one, the trial court imposed a three-year sentence in the workhouse and a \$500 fine. On count two, the trial court imposed a two-year sentence in the workhouse and a \$500 fine. The incarceration terms were ordered to be served concurrently. The trial court ordered her sentences suspended after one hundred and twenty days, day-for-day, in the jail or workhouse, followed by four years of probation.

ANALYSIS

We first address those issues asserted by both defendants.

Sufficiency of Evidence

The jury convicted both defendants of bribing a witness:

A person commits an offense who:

(1) Offers, confers or agrees to confer any thing of value upon a witness or a person the defendant believes will be called as a witness in any official proceeding with intent to:

(a) Corruptly influence the testimony of the witness; . . .

Tenn. Code Ann. § 39-16-107(a),(1)(A). Both defendants assert that the evidence did not support the jury's verdict because that evidence did not establish intent to corruptly influence testimony. But rather, they argue that the

state has proven, at most, that the defendants sought to fabricate evidence in order to obtain a more favorable plea bargaining position. We disagree.

The defendants emphasize that the plan presented to Williamson would likely preclude a trial for Demonbreun's murder charge. Although Williamson understood the plan as a purchase of her testimony, the defendants argue that Williamson would not need to testify at trial, because no trial would occur after the state reviewed the fabricated tape. The defendants thus assert that they sought no corruption of "testimony" and therefore argue that the elements of the charged statute are unfulfilled. Further, continue the defendants, the statute prohibits corruption of testimony, not of a witness.

We do not agree that "testimony" is so far divorced from the "witness" that one may purchase the former without influencing the latter. We conclude that the defendants attempted to corrupt testimony.

We acknowledge that Williamson lacks expertise in criminal procedure and evidence, yet she apparently recognized the obvious outcome of the plan: At trial, she would face inconsistencies between her previous testimony and the fabricated statements. The defendants also anticipated this situation: If the state explored the contrast between the statement and the earlier testimony, she was instructed to say that the state "pressured" her to give the incriminating preliminary hearing testimony. The defendants also recognized that having Williamson leave town to avoid trial testimony would not achieve their goals, because, as Smith advised Hughes, the state would suspect that they had procured Williamson's absence.

The defendants further argue that the word "testimony" should be narrowly defined to encompass only statements in court proceeding. They urge

this Court to narrowly consider the evidence in this case as, at most, an effort to create a tape recording or tampering with or the fabrication of evidence. See Tenn. Code Ann. § 39-16-503. We decline the opportunity to accept the narrow interpretation. As the trial court found the fabrication of a tape would have had major implications on the past and future testimony of Rhonda Williamson. Upon this point we agree with the trial court and State. The scheme planned by both Hughes and Smith, if successful, could have influenced any subsequent testimony of Rhonda Williamson in a number of ways.

Specifically, the trial court recognized that if the State pursued the case, despite the false recording, Ms. Williamson's actual trial testimony would be influenced by her knowledge and the existence of the tape recording. Further, if she did not appear at trial, the replay of her preliminary hearing testimony could be hampered by the subsequent playing of the fabricated tape recording. There can be no doubt that this scheme was designed with the intent to corruptly influence the testimony of Rhonda Williamson.

The State cites to a Alabama case in support of its contentions. See Maddox v. Smith, 520 S.W.2d 143 (Ala. Crim. App. 1986), *cert. denied*, (Ala. 1988). The Alabama statute in effect at the time stated that "[a] person commits the crime of bribing a witness if he offers, confers or agrees to confer anything of value upon a witness or person he believes will be called as a witness in any official proceeding with intent to corruptly influence the testimony of that person."

In Maddox, the father of a man already convicted of a drug offense offered money to a deputy to reconsider his trial testimony. The defendant's son had already been convicted. On appeal, the defendant argued that because his son had been convicted, the deputy was no longer a witness under the statute. The Alabama Court of Appeals held that because the son's case was pending on

appeal and two co-defendants were awaiting trial, the deputy was indeed still a witness under the statute. 520 S.W.2d at 149. The Court rejected the argument that because the codefendants eventually did not go to trial, the deputy's status as a witness was somehow diminished.

Appellants here do not question whether Rhonda Williams was a witness. However, the argument is somehow similar to Maddox. In this case, Rhonda Williamson was a witness in the case whose testimony would be used at the trial of Wayford Demonbreun. The bribery involved her testimony at the preliminary hearing and her future use as a witness for the State. The fact that the plan involved a tape recording of a statement by Ms. Williamson for use in subsequent discussions with the State, though not necessarily at trial, does not impact nor change the testimonial nature of her past and future statements.

Having determined that the defendant's actions fall within the conduct prohibited by Tennessee Code Annotated § 39-16-107(a),(1)(A), we conclude that the evidence was sufficient to support the verdict. When a defendant challenges the sufficiency of the evidence, this Court must determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Duncan, 698 S.W.2d 63, 67 (Tenn. 1985); Tenn. R. App. P. 13(e). The state is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom. See State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

The credibility of witnesses, the weight of their testimony, and the reconciliation of conflicts in the evidence are matters entrusted exclusively to the trier of fact. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v.

Gentry, 881 S.W.2d 1, 3 (Tenn. Crim. App. 1993). A jury verdict for the state accredits the testimony of the state's witnesses and resolves all conflicts in favor of the state. See State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). Moreover, a guilty verdict removes the presumption of innocence enjoyed by defendants at trial and replaces it with a presumption of guilt. See State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Thus, a defendant challenging the sufficiency of the evidence carries the burden of illustrating to this Court why the evidence is insufficient to support the verdict. See State v. Freeman, 943 S.W.2d 25, 29 (Tenn. Crim. App. 1996).

The defendants initiated contact with Williamson and offered her money in exchange for a taped recantation. Tape recordings and Williamson's testimony evidence the defendants' attempts to elicit this statement sufficient for the trier of fact to find guilt beyond a reasonable doubt.

Fifth Amendment Issue

Timothy "Teenie Weenie" Davis was the last witness called by the State of Tennessee against the defendants. Prior testimony, standing alone, could not support a conviction on the charge of solicitation to commit First Degree murder charge. Apparently, the state planned to rely solely upon the testimony of Davis.

We first note that we do not determine whether this witness actually had a right to invoke his Fifth Amendment privilege. Rather, we focus upon what prejudicial effect the witness's refusal to testify in the presence of the jury had on the fairness of the proceedings against the defendants, Dennis Hughes and Suvonnya Smith. The defendants argue that the witness's refusal had a fatal effect on the proceedings and that their convictions should be accordingly reversed. Further, the defendant's argue that the prosecutor's actions, calling Davis to the stand, amounted to prosecutorial misconduct. We disagree.

Generally, whether prejudicial error occurred is determined on a case by case basis. For instance, Wharton's Criminal Evidence, 14 edition, states, "where a prosecuting attorney calls an accomplice as a witness for the prosecution for the apparent purpose of forcing him to assert his privilege against self-incrimination, the error may or may not be prejudicial." The defendants would argue that we eschew this type of case-specific analysis and hold that such conduct constitutes per se prejudicial error. This we will not do. The defendant provides no Tennessee authority in support of a per se approach.

The law in Tennessee does provide that a jury may not draw an inference from a witness's invocation of the Fifth Amendment privilege. See State v. Dicks, 615 S.W.2d 126 (Tenn. 1981); State v. Harris, 839 S.W.2d 54 (Tenn. 1992). However, we are sensitive to the dangers involved when a witness, confronted with prosecutorial questioning connecting him to the defendants, invokes the privilege. Accordingly, we review for prejudice.

Reviewing these claims, some jurisdictions inquire solely into the intent of the prosecutor. We, however, are unpersuaded by this rationale. Instead, we take note of several factors in the instant case which weigh against a finding of prejudice. First, we note the time which the witness was before the jury. Davis was before the jury for approximately two minutes. Second, we note the character of the questions asked of the witness. Davis was asked only one question relating to the defendants and that question was hardly damning or suggestive. He was simply asked whether he went to Hughes's office with Smith. Third, we note that this witness was entirely unrelated to the circumstances and charges left before the jury. Davis was not involved in the criminal episodes constituting the bribery and conspiracy to bribe charges. Rather, he arrived on the scene much later and then only in the capacity charged

in count three, solicitation to murder. Nor was any evidence presented to the jury to suggest any connection between Davis and the bribery. Finally, we note that the judge did not simply offer a curative instruction, but rather, due to the facts of this case, completely removed from the jury's consideration the one charge to which the witness had any connection. Accordingly, we conclude that no prejudice resulted from Davis's invocation.

Next, we review defendants' claims of prosecutorial misconduct. Our Supreme Court has articulated five factors to be considered when determining whether prosecutorial misconduct prejudices a defendant and constitutes reversible error. See State v. Buck, 670 S.W.2d 600, 609 (Tenn. 1984). We consider the conduct in context of the facts and circumstances of the case; the curative measures undertaken; the intent of the prosecutor; the cumulative effect of the conduct and other errors in the record; and the relative strength and weakness of the case.

In this case, the prosecutor had clear basis for bringing the solicitation to murder charge and for calling Davis to testify. Davis had cooperated with the police, informed them of the murder for hire scheme, and even recorded a conversation with defendant Hughes. However, the circumstances were complicated by the threats allegedly placed against his mother if he testified against Hughes. Afterwards, Davis expressed some equivocation about testifying. Nevertheless, it cannot properly be said that the prosecutor knew that Davis would not testify, but rather, the prosecutor, faced with some uncertainty, still had good reason to believe he would testify based on Davis's previous cooperation.

The trial judge, in response to Davis's invocation, removed consideration of solicitation to murder from the jury. We find this curative measure to be

substantial especially in light of the fact that this one count is the only part of the case to which Davis had any relation.

We also do not doubt the prosecutor's intent. As stated above, he had sufficient reason to believe that Davis, despite his equivocation, would testify.

Finally, we find no cumulative effect from any other error in the record that would mandate reversal. The case against both defendants was strong.

We note that Smith has claimed plain error, because her counsel did not make a prior objection to Davis' appearance before the jury and failed to cite that issue in the Motion for New Trial. Since we do not find an error of constitutional magnitude or an error that would affect "the substantial rights of an accused," Tenn. R. Crim. P. 52(b), we find the issue not only waived but also without substantive merit.

Consecutive Fines

The defendant Hughes asserts that his fines of \$5000, for conspiracy to commit bribery, and \$10,000 for bribery, should be imposed concurrently. Therefore, he argues that the fines should total \$10,000 versus the \$15,000 total assessed. He notes that his confinement periods were imposed concurrently and asserts that a trial court errs when it imposes part of a sentence concurrently and the remainder consecutively, see State v. Conners, 924 S.W.2d 362, 364 (Tenn. Crim. App. 1996), in that a "fine" is part of the "sentence," see State v. Bryant, 805 S.W.2d 762 (Tenn. 1991).

We disagree. Imposition of concurrent sentences "does not imply that fines are to be paid concurrently, or non-cumulatively, as well." State v. Woodcock, 922 S.W.2d 904, 918 (Tenn. Crim. App. 1995); see also State v.

Patrick Lewis, II, No. 01C01-9608-CC-00378 (Tenn. Crim. App. filed October 30, 1997, at Nashville). This issue is without merit.

Evidentiary Issues

The defendant, Hughes, asserts that the trial court erred in allowing the late Judge Shriver's testimony regarding a fee dispute between Hughes and Demonbreun. Judge Shriver testified that he required Hughes to surrender the fees and that his determination of the funds paid to Hughes was difficult because of the lack of receipts. The testimony further established that Judge Shriver contemplated a future hearing to determine if the court should hold Hughes in contempt.

Relevant evidence is evidence which has a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without that evidence. See Tenn. R. Evid. 401. Even relevant evidence, however, may be excluded where there exists a danger of unfair prejudice. See Tenn. R. Evid. 403.

In this case, we conclude that Shriver's testimony about the fee dispute, if relevant at all, tended only to prove Hughes' access to funds necessary to finance bribery. This connection is tenuous and questionable at best; further, even if we credit this connection, we find that its prejudicial effect outweighed its probative value. The state could have just as easily proved Hughes' access by other more direct and less prejudicial means. Therefore, we conclude that the trial court erred and abused its discretion in allowing Shriver's testimony about the fee dispute. See State v. DuBose, 953 S.W.2d 649, 654 (Tenn. 1997). However, in light of all the evidence presented, we conclude that such error is harmless. See Tenn. R. App. P. 36(b); Tenn. R. Crim. P 52(a). Shriver's

testimony was irrelevant and immaterial to Hughes' guilt, and could not have affected the result of the trial on the merits.

Sentencing of Smith

Smith asserts that she should have received judicial diversion, especially mitigated status, or total probation. We first note that Smith did receive the benefit of an alternate sentence: A split confinement sentence of probation after one hundred and twenty days incarceration. We do not feel that the trial court erroneously imposed this sentence. "Denial of probation may be based solely upon the circumstances of the offense when they are of such a nature as to outweigh all other factors favoring probation." State v. Bingham, 910 S.W.2d 448 (Tenn. Crim. App. 1995).

Smith actively participated in an attack on the very core principles of fairness and integrity that constitutes the heart of the criminal justice system. Absent vigilance against such attacks, the results of that system lose credibility, and citizens as a whole lose faith in and respect for our society's mechanism for punishing the guilty and protecting the innocent. This crime involved tenacious execution of a long-term plan to pervert judicial proceedings. Punishment including confinement is particularly suited to provide an effective deterrent to others likely to commit similar offenses. See Tenn. Code Ann. § 40-35-103(1)(B). We find no error in this sentence.

We have also reviewed the defendant's requests for pretrial diversion and especially mitigated status, and we find no reversible error regarding those issues.

CONCLUSION

Accordingly, we AFFIRM the convictions of Dennis Hughes and Suvonnya Smith and we affirm the sentence of Smith.

JOHN EVERETT WILLIAMS, Judge

CONCUR:

DAVID G. HAYES, Judge

JAMES CURWOOD WITT, JR., Judge